

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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TRUSTEES OF EMPIRE STATE
CARPENTERS ANNUITY,
APPRENTICESHIP, LABOR-MANAGEMENT
COOPERATION, PENSION AND WELFARE
FUNDS,

ADOPTION ORDER
13-cv-6364 (ADS)(GRB)

Plaintiffs,

-against-

BCM DRILLING COMPANY, L.L.C., also
known as BCM Drilling,

Defendant.

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APPEARANCES:

Virginia & Ambinder LLP

Attorneys for the Plaintiff

111 Broadway

14th Floor - Suite 1403

New York, NY 10006

By: Charles R. Virginia, Esq.
Richard B. Epstein, Esq.
Michael Howard Isaac, Esq., of Counsel

NO APPEARANCE:

The Defendant BCM Drilling Company, L.L.C., also known as BCM Drilling

SPATT, District Judge.

On November 18, 2013, the Plaintiffs Trustees of the Empire State Carpenters Annuity, Apprenticeship, Labor-Management Cooperation, Pension and Welfare Funds (the "Plaintiff") commenced this action under Section 502(a)(3) of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. § 1132(a)(3), Section 301 of the Labor Management Relations Act of 1947 ("LMRA"), as amended, 29 U.S.C. § 185; and Section 9 of

the Federal Arbitration Act, 9 U.S.C. § 9, to confirm and enforce an Arbitrator's Award rendered pursuant to a collective bargaining agreement between the Northeast Regional Council of Carpenters and the Defendant, BCM Drilling Company, L.L.C. also known as BCM Drilling (the "Defendant").

On March 19, 2014, the Clerk of the Court noted the default of the Defendant. On April 10, 2014, the Plaintiffs moved for a default judgment. On April 11, 2014, the Court referred this matter to United States Magistrate Judge Gary R. Brown for a recommendation as to whether the motion for a default judgment should be granted, and if so, whether damages should be awarded, including reasonable attorneys' fees and costs.

On February 27, 2015, Judge Brown issued a Report recommending that (1) the motion for a default judgment be construed as an unopposed motion for summary judgment consistent with Second Circuit precedent; (2) the arbitration award be confirmed; (2) the Plaintiffs be awarded \$40,856.18 plus interest from the date of the arbitration through the date of judgment at the rate of 0.75% per month, and \$2,125.50 in attorneys' fees and costs.

More than fourteen days have elapsed since service of the Report and Recommendation on the Defendant, which has failed to file an objection.

Pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72, this Court has reviewed the February 27, 2015 Report and Recommendation for clear error, and finding none, now concurs in both its reasoning and its result. See Trustees of Empire State Carpenters Annuity, Apprenticeship, Labor-Mgmt. Cooperation, Pension & Welfare Funds v. C. Downing Enterprises LLC, No. 14-CV-323 (ADS)(AKT), 2015 WL 1042481, at *1 (E.D.N.Y. Mar. 10, 2015)(reviewing Report and Recommendation without objections for clear error).

Accordingly, the Court adopts Judge Brown's February 27, 2015 Report and Recommendation in its entirety. The Court (1) treats the motion for a default judgment as an unopposed motion for summary judgment; (2) confirms the arbitration award; and (2) awards the Plaintiffs \$40,856.18 plus interest from the date of the arbitration through the date of judgment at the rate of 0.75% per month, and \$2,125.50 in attorneys' fees and costs. The Clerk of the Court is respectfully directed to enter judgment consistent with this Adoption Order and to close the case.

SO ORDERED.

Dated: Central Islip, New York
March 18, 2015

Arthur D. Spatt
ARTHUR D. SPATT
United States District Judge